

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

JOAN SCHLENKER,)	
)	
Plaintiff,)	Case No.:
)	
vs.)	Missouri Circuit Court for Cape Girardeau
)	Cause No.: 14CG-CC00174
BIG LOTS STORES, INC.,)	
)	<u>JURY TRIAL DEMANDED</u>
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, et seq., Defendant Big Lots Stores, Inc., files its Notice of Removal of this lawsuit, originally filed in the Missouri Circuit Court for Cape Girardeau County, and in support of this Notice states:

1. This case is a civil action over which this Court has original jurisdiction, pursuant to 28 U.S.C. § 1332, and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441 et seq.
2. Plaintiff's Petition asserts allegations of negligence and is a controversy between citizens of the States of Missouri and Ohio.
3. Plaintiff's petition does not assert her state of citizenship but does state that she is a resident of Missouri. Petition, attached as Exhibit A.
4. It is defendant's information and belief that plaintiff is a citizen of Missouri.
5. Records from the recorder of deeds for Scott County, Missouri, shows plaintiff purchased her current home in 1966. Scott County Recorder of Deeds Records, attached as Exhibit B.

6. Records from the Scott County Collector of Revenue show payments by plaintiff for property taxes since at least 1999. Tax Receipts, attached as Exhibit C.

7. Further, plaintiff has been registered to vote in Scott County, Missouri since 1977. Letter from Scott County Voter Register, attached as Exhibit D.

8. Citizenship of an individual person is established by the person's physical residence and the intent to remain in that state. *Altimore v. Mount Mercy College*, 420 F.3d 763, 768 (8th Cir. 2005) (physical presence plus intent to remain establishes citizenship)

9. When determining whether a person has an intent to remain in a state, Courts will look to the location of the person's residence, real and personal property, payment of taxes, voting registration, and location of spouse and children among others. *Techno-TM, LLC v. Fireaway, Inc.*, 928 F.Supp.2d 694, 697 (S.D.N.Y. 2013).

10. The documents demonstrate plaintiff has owned property in Missouri since 1966, has paid taxes in Missouri, and has been registered to vote in Missouri since that time. These facts demonstrate plaintiff currently resides in Missouri and has an intent to remain in Missouri indefinitely. *Altimore*, 420 F.3d at 768. Thus, plaintiff is domiciled in Missouri and is therefore a citizen of Missouri. *Id.*

11. Big Lots Stores, Inc., is incorporated in the State of Ohio and its corporate headquarters is located in Ohio. Affidavit of Ronald Parisotto, attached as Exhibit E.

12. Defendant is therefore a citizen of Ohio. 28 U.S.C. § 1332(c)(1); *Hertz v. Friend*, 559 U.S. 77, 92-93 (2010) (corporation is citizen of state of incorporation and where its principal place of business is).

13. The matter in controversy exceeds \$75,000.00 because plaintiff has made a demand for \$285,000.00. Demand, attached as Exhibit F.

14. This civil action is between citizens of the States of Missouri and Ohio. Further the amount in controversy exceeds \$75,000.00. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

15. Defendant Big Lots Stores, Inc., was served with a copy of the plaintiff's petition on September 2, 2014. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within thirty (30) days of the Defendant receiving copies of the initial pleading. *See* Fed.R.Civ.P. 6.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1441 and Local Rule 3-2.07 because this action was originally filed in Cape Girardeau County, Missouri, which is included in this Court's judicial area.

17. Filed with this Notice of Removal, and attached as Exhibit G, is a true and correct copy of all process, papers, pleadings, exhibits, and orders contained in the Missouri Circuit Court file.

18. Attached as Exhibit H is the Civil Cover Sheet.

19. Attached as Exhibit I is the Original Filing Form.

WHEREFORE Defendant Big Lots Stores, Inc. prays that the above-captioned action be removed from the Missouri Circuit Court of Cape Girardeau County.

/s/Joseph R. Swift

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CERTIFICATE OF SERVICE

A copy of the foregoing was served via US Mail, postage prepaid, on 2nd day of October 2014, to: Mallory Gibson, Cook Barkett Ponder & Wolz, 1610 Kingshighway, Ste. 201, Cape Girardeau, Missouri 64201, *Attorneys for Plaintiff*.

/s/Joseph R. Swift

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